IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4438 OF 2006

Gurmeet Singh Kohli .. Applicant.

V/s.

Union of India & Ors. .. Respondent.

Shri.S.Kantawala a/w.Yogesh Rohira for the applicant.
Shri.Rajesh More, A.P.P. for the State.
Shri.Manoranjan Sahu for respondent Nos. 1 & 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18TH DECEMBER, 2006

P.C.:

. The applicant has been arrested on 12th December, 2006 by the officer of S.I.I.B.(Export) Dept. in exercise of powers u/s.104 of the Customs Act, 1962. The offences alleged are punishable u/s.132 and Sec.135 (1) (ii) of Customs Act, 1962.

. Despite filing an affidavit in reply and denying

the contents of the bail application, the learned advocate appearing for the prosecution in all fairness concedes that both offences alleged are bailable. He also concedes that the applicant was not informed erroneously of the fact that he is arrested in connection with offences, which are bailable.

. Mr.Kantawala was at pains to point out if the remand application does not disclose the provision under which the offence is allegedly spelt out that fact will have a great bearing in this case. He submits that accused was remanded to judicial custody. This order has been passed without realising that the offences alleged are bailable.

. Be that as it may, now that the prosecution does not dispute that the offence alleged in this case is bailable, then, the case is covered by the judgement of learned single Judge of this Court reported in 2005 (179) E.L.T. 532 (Bom.) (Subhash Choudhary v/s. Deepak Jyala). The same was followed in Criminal Application No.4264 of 2006 by this Court.

. For the reasons assigned in the aforesaid

judgement and order, the applicant deserves to be enlarged on bail. Hence, the following order : -

i) The applicant arrested in connection with R.A.No.103 of 2006 pending before 3rd Court, Esplanade, Mumbai shall be enlarged on bail for sum of Rs.1,00,000/- (Rs.One lac only) with one or two local sureties in the like amount.

ii) The applicant shall report to Intelligence Officer, S.I.I.B. (Exports), Nhava Sheva twice a week from 11.00 a.m. and 2.00 p.m. initially for a period of four weeks and thereafter as directed by the Trial Court. till the complaint is filed.

iii) The applicant shall deposit his passport forthwith with respondent No.2 S.I.I.B. (Exports), Nhava Sheva . Deposit of passport is condition precedent for release of applicant on bail.

iv) The applicant shall not leave India without prior permission of the trial court.

v) The applicant shall furnish his address to the Inverstigating Officer where he proposes to reside after bail and during pendency of the trial. The applicant shall not change his residence without prior intimation of the Investigating Agency.

vi) The bail is granted subject to condition that the applicant shall not directly or indirectly make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

vii) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

viii) Any observation/s made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

ix) Application disposed of.

x) All concerned to act upon an authenticated copy of this order.

At the request of Shri.Kantawala, for a period of five days from today, the applicant would be entitled to avail cash bail to the extent of aforesaid amount.

(S.C.Dharmadhikari, J.)